

## § 4022.22

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(paragraph (e)(2)(i) of this section), except that the participant elects to receive his benefit as a 50% joint-and-survivor annuity. Before plan termination, the participant was receiving a total benefit of \$1,777: His \$1,530 accrued benefit, reduced by 10% for the survivor benefit, plus the \$400 temporary supplement. From the termination date until the participant reaches age 62, PBGC will guarantee \$1,500: The \$1,500 accrued benefit (as a straight-life annuity) as of the bankruptcy filing date, reduced to \$1,350 to reflect the 10% reduction for the survivor benefit, plus \$150 of the temporary supplement that, in combination with the \$1,350, does not exceed the \$1,500 accrued-at-normal limit. When the participant reaches age 62, his guaranteed benefit is reduced to \$1,350, because under plan provisions the temporary supplement ceases at that time.

[61 FR 34028, July 1, 1996, as amended at 67 FR 16956, Apr. 8, 2002; 76 FR 34602, June 14, 2011]

### § 4022.22 Maximum guaranteeable benefit.

(a) *In general.* Subject to section 4022B of ERISA and part 4022B of this chapter, and except as provided in paragraph (b) of this section, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65, equal to the lesser of—

(1) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan; or

(2) \$750 multiplied by the fraction  $x/13,200$  where “x” is the Social Security contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

(b) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination—

(1) The five-year period described in paragraph (a)(1) of this section shall not include any calendar years that end after the bankruptcy filing date.

(2) “Bankruptcy filing date” is substituted for “termination date of the plan” in paragraph (a)(2) of this section. Example: A contributing sponsor files a bankruptcy petition in 2007. The sponsor's plan terminates in a distress termination with a termination date in 2008. PBGC will compute participants' maximum guaranteeable benefits based on the amount determined under paragraph (a)(2) for 2007 (\$4,125.00 as a straight-life annuity starting at age 65).

(c) *Gross income.* For purposes of paragraph (a)(1) of this section—

(1) Gross income means “earned income” as defined in section 911(d)(2) of the Code, determined without regard to any community property laws.

(2) If the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

[76 FR 34602, June 14, 2011]

### § 4022.23 Computation of maximum guaranteeable benefits.

(a) *General.* Where a benefit is payable in any manner other than as a monthly benefit payable for life commencing at age 65, the maximum guaranteeable monthly amount of such benefit shall be computed by applying the applicable factor or factors set forth in paragraphs (c)–(e) of this section to the monthly amount computed under § 4022.22. In the case of a step-down life annuity, the maximum guaranteeable monthly amount of such benefit shall be computed in accordance with paragraph (f) of this section.

(b) *Application of adjustment factors to monthly amount computed under § 4022.22.* (1) Each percentage increase or decrease computed under paragraphs (c), (d), and (e) of this section shall be added to or subtracted from a base of

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1.00, and the resulting amounts shall be multiplied.

(2) The monthly amount computed under § 4022.22 shall be multiplied by the product computed pursuant to paragraph (b)(1) of this section in order to determine the participant's and/or beneficiary's maximum benefit guaranteeable.

(c) *Annuitant's age factor.* If a participant or the beneficiary of a deceased participant is entitled to and chooses to receive his benefit at an age younger than 65, the monthly amount computed under § 4022.22 shall be reduced by the following amounts for each month up to the number of whole months below age 65 that corresponds to the later of the participant's age at the termination date or his age at the time he begins to receive the benefit: For each of the 60 months immediately preceding the 65th birthday, the reduction shall be  $\frac{1}{12}$  of 1%; For each of the 60 months immediately preceding the 60th birthday, the reduction shall be  $\frac{1}{12}$  of 1%; For each of the 120 months immediately preceding the 55th birthday, the reduction shall be  $\frac{2}{12}$  of 1%; and For each succeeding 120 months period, the monthly percentage reduction shall be  $\frac{1}{2}$  of that used for the preceding 120 month period.

(d) *Factor for benefit payable in a form other than as a life annuity.* When a benefit is in a form other than a life annuity payable in monthly installments, the monthly amount computed under § 4022.22 shall be adjusted by the appropriate factors on a case-by-case basis by PBGC. This paragraph sets forth the adjustment factors to be used for several common benefit forms payable in monthly installments.

(1) *Period certain and continuous annuity.* A period certain and continuous annuity means an annuity which is payable in periodic installments for the participant's life, but for not less than a specified period of time whether or not the participant dies during that period. The monthly amount of a period certain and continuous annuity computed under § 4022.22 shall be reduced by the following amounts for each month of the period certain subsequent to the termination date:

For each month up to 60 months deduct  $\frac{1}{24}$  of 1%;

For each month beyond 60 months deduct  $\frac{1}{12}$  of 1%.

(i) A cash refund annuity means an annuity under which if the participant dies prior to the time when he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a lump-sum death benefit. A cash refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the lump-sum refund by the monthly amount to which the participant is entitled under the terms of the plan.

(ii) An installment refund annuity means an annuity under which if the participant dies prior to the time he has received pension payments equal to a fixed sum specified in the plan, then the balance is paid as a death benefit in periodic installments equal in amount to the participant's periodic benefit. An installment refund annuity shall be treated as a benefit payable for a period certain and continuous. The period of certainty shall be computed by dividing the amount of the remaining refund by the monthly amount to which the participant is entitled under the terms of the plan.

(2) *Joint and survivor annuity (contingent basis).* A joint and survivor annuity (contingent basis) means an annuity which is payable in periodic installments to a participant for his life and upon his death is payable to his beneficiary for the beneficiary's life in the same or in a reduced amount. The monthly amount of a joint and survivor annuity (contingent basis) computed under § 4022.22 shall be reduced by an amount equal to 10% plus  $\frac{1}{10}$  of 1% for each percentage point in excess of 50% of the participant's benefit that will continue to be paid to the beneficiary. If the benefit payable to the beneficiary is less than 50 percent of the participant's benefit, PBGC shall provide the adjustment factors to be used.

(3) *Joint and survivor annuity (joint basis).* A joint and survivor annuity (joint basis) means an annuity which is payable in periodic installments to a participant and upon his death or the death of his beneficiary is payable to the survivor for the survivor's life in

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the same or in a reduced amount. The monthly amount of a joint and survivor annuity (joint basis) computed under § 4022.22 shall be reduced by an amount equal to  $\frac{1}{10}$  of 1% for each percentage point in excess of 50% of the participant's original benefit that will continue to be paid to the survivor. If the benefit payable to the survivor is less than 50 percent of the participant's original benefit, PBGC shall provide the adjustment factors to be used.

(e) When a benefit is payable in a form described in paragraph (d)(2) or (3) of this section, and the beneficiary's age is different from the participant's age, by 15 years or less, the monthly amount computed under § 4022.22 shall be adjusted by the following amounts: If the beneficiary is younger than the participant, deduct 1% for each year of the age difference; If the beneficiary is older than the participant, add  $\frac{1}{2}$  of 1% for each year of the age difference. In computing the difference in ages, years over 65 years of age shall not be counted. If the difference in age between the

beneficiary and the participant is greater than 15 years, PBGC shall provide the adjustment factors to be used.

(f) *Step-down life annuity.* A step-down life annuity means an annuity payable in a certain amount for the life of the participant plus a temporary additional amount payable until the participant attains an age specified in the plan.

(1) The temporary additional amount payable under a step-down life annuity shall be converted to a life annuity payable in monthly installments by multiplying the appropriate factor based on the participant's age and the number of remaining years of the temporary additional benefit by the amount of the temporary additional benefit. The factors to be used are set forth in the table below. The amount of the monthly benefit so calculated shall be added to the level amount of the monthly benefit payable for life to determine the level-life annuity that is equivalent to the step-down life annuity.

**FACTORS FOR CONVERTING TEMPORARY ADDITIONAL BENEFIT UNDER STEP-DOWN LIFE ANNUITY**

Age of participant <sup>1</sup> at the later of the date the temporary additional benefit commences or the date of plan termination	Number of years temporary additional benefit is payable under the plan as of the date of plan termination <sup>2</sup>									
	1	2	3	4	5	6	7	8	9	10
45 .....	0.060	0.117	0.170	0.220	0.268	0.315	0.355	0.395	0.435	0.475
46 .....	.061	.119	.173	.224	.273	.321	.362	.403	.444	.485
47 .....	.062	.121	.176	.228	.278	.327	.369	.411	.453	.495
48 .....	.063	.123	.179	.232	.283	.333	.376	.419	.462	.505
49 .....	.064	.125	.182	.236	.288	.339	.383	.427	.471	.515
50 .....	.065	.127	.185	.240	.293	.345	.390	.435	.480	.525
51 .....	.066	.129	.188	.244	.298	.351	.397	.443	.489	.535
52 .....	.067	.131	.191	.248	.303	.357	.404	.451	.498	.545
53 .....	.068	.133	.194	.252	.308	.363	.411	.459	.507	.555
54 .....	.069	.135	.197	.256	.313	.369	.418	.467	.516	.565
55 .....	.070	.137	.200	.260	.318	.375	.425	.475	.525	.575
56 .....	.072	.141	.206	.268	.328	.387	.439	.491	.543	.....
57 .....	.074	.145	.212	.276	.338	.399	.453	.507	.....	.....
58 .....	.076	.149	.218	.284	.348	.411	.467	.....	.....	.....
59 .....	.078	.153	.224	.292	.358	.423	.....	.....	.....	.....
60 .....	.080	.157	.230	.300	.368	.....	.....	.....	.....	.....
61 .....	.082	.161	.236	.308	.....	.....	.....	.....	.....	.....
62 .....	.084	.165	.242	.....	.....	.....	.....	.....	.....	.....
63 .....	.086	.169	.....	.....	.....	.....	.....	.....	.....	.....
64 .....	.088	.....	.....	.....	.....	.....	.....	.....	.....	.....

<sup>1</sup> At last birthday.

<sup>2</sup> If the benefit is payable for less than 1 yr, the appropriate factor is obtained by multiplying the factor for 1 yr by a fraction, the numerator of which is the number of months the benefit is payable, and the denominator of which is 12. If the benefit is payable for 1 or more whole years, plus an additional number of months less than 12, the appropriate factor is obtained by linear interpolation between the factor for the number of whole years the benefit is payable and the factor for the next year.

(2) If a participant is entitled to and chooses to receive a step-down life annuity at an age younger than 65, the monthly amount computed under

§ 4022.22 shall be adjusted by applying the factors set forth in paragraph (c) of this section in the manner described in paragraph (b) of this section.

(3) If the level-life monthly benefit calculated pursuant to paragraph (f)(1) of this section exceeds the monthly amount calculated pursuant to paragraph (f)(2) of this section, then the monthly maximum benefit guaranteeable shall be a step-down life annuity under which the monthly amount of the temporary additional benefit and the amount of the monthly benefit payable for life, respectively, shall bear the same ratio to the monthly amount of the temporary additional benefit and the monthly benefit payable for life provided under the plan, respectively, as the monthly benefit calculated pursuant to paragraph (f)(2) of this section bears to the monthly benefit calculated pursuant to paragraph (f)(1) of this section.

(g) *PPA 2006 bankruptcy termination.*

(1) In a PPA 2006 bankruptcy termination, except as provided in the next sentence, “bankruptcy filing date” is substituted for “termination date” and “date of plan termination” each place that “termination date” or “date of plan termination” appears in paragraphs (c), (d), and (f) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will determine the factors in paragraphs (d), (e), and (f) based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date. (The case of Participant C in the example below illustrates this exception.)

(2) *Example.* (i) *Facts.* The contributing sponsor of a plan files a bankruptcy petition in July 2007, and the sponsor’s plan terminates in a PBGC-initiated termination with a termination date in July 2008. At the bankruptcy filing date:

(A) Participant A was age 64 and receiving a benefit from the plan in the form of a 10-year certain-and-continuous annuity, with 4 years remaining in the certain period.

(B) Participant B was age 60 and 6 months and was still working. She began receiving a benefit from the plan

in the form of a 50% joint-and-survivor annuity when she turned 61 in January 2008. Her spouse was the same age as she.

(C) Participant C was age 60 and was receiving a \$3,000/month benefit from the plan in the form of a 50% joint-and-survivor annuity, with his spouse, age 58, as his beneficiary. Participant C he died in February 2008 and in March 2008 his spouse began receiving a 50% survivor annuity of \$1,500/month.

(D) Participant D was age 59 and was still working; he began receiving a straight-life annuity from the PBGC in July 2010 when he was 62 years old.

(ii) *Conclusions.* In accordance with § 4022.22(b)(2), PBGC computes the maximum guaranteeable monthly benefit for Participants A, B, and D and for the spouse of Participant C based on the \$4,125.00 amount determined under § 4022.22(a)(2) for 2007. (The gross-income-based limitation in § 4022.22(a)(1) does not apply to any of these participants.)

(A) Participant A’s maximum guaranteeable monthly benefit is \$3,759.53 [ $\$4,125.00 \times .93$  (7% reduction for a benefit starting at age 64)  $\times .98$  (2% reduction for a certain-and-continuous annuity with 4 years remaining in the certain period)].

(B) Participant B’s maximum guaranteeable monthly benefit is \$2,673.00 [ $\$4,125.00 \times .72$  (28% reduction for a benefit starting at age 61)  $\times .90$  (10% reduction due to the 50% joint-and-survivor feature)].

(C) Participant C’s spouse’s maximum guaranteeable monthly benefit is \$2,351.25 [ $\$4,125.00 \times .57$  (43% reduction for a benefit starting at age 58; no reduction for the form of benefit because the spouse’s survivor benefit is a straight-life annuity)]. Because that amount exceeds the spouse’s \$1,500 monthly survivor benefit, the spouse’s benefit is not reduced by the maximum guaranteeable benefit limitation.

(D) Participant D’s maximum guaranteeable monthly benefit is \$3,258.75 [ $\$4,125.00 \times .79$  (21% reduction for a benefit starting at age 62)].

[61 FR 34023, July 1, 1996; 61 FR 36626, July 12, 1996; 76 FR 34603, June 14, 2011]

#### § 4022.24 Benefit increases.

(a) *Scope.* This section applies: